IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.25 of 1993

Raman .. Appellant

-Vs-

Alamelu Ammal .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 6.2.1991 in A.S.No.191 /90 on the file of the I Additional District Judge, Trichirapalli, confirming the judgment and decree of the District Munsif, Thurayur, dated 19.11.1989 in O.S.No.14/84.

!For Appellant : Mr.C.R.Prasanan

^For Respondent : Mr.R.Singaravelan

:JUDGMENT

The plaintiff in a suit for declaration and permanent injunction, who lost his case before the Courts below, is the appellant herein.
2. The following facts are noticed in the pleadings of the parties:
The plaint Schedule mentioned immovable property originally belonged to one Kandasamy Udayar. He died 42 years prior to the filing of the suit, leaving behind him his wife Muthammal and sons Krishnasamy and Raman, the plaintiff in the suit, as his heirs, and they have been in enjoyment of the property. Muthammal was enjoying the southern side, while the sons were enjoying the northern side. She executed a sale deed in respect of plots 1 and 2 on 16.4.1966 in favour of the plaintiff and his brother Krishnasamy. The plaintiff and his brother Krishnasamy entered into an oral partition, by which they were enjoying the respective shares. Krishnasamy executed a sale deed in respect of a part of the northern plot, enjoyed by him, on 25.2.1976 in favour of the defendant. Taking advantage of the absence of the plaintiff, the defendant has fixed a door frame on the southern part in plot 2, which belonged to the plaintiff, and the same was objected to by the plaintiff. Under such circumstances, there arose a necessity for filing the instant suit for the said reliefs.
3. The suit was resisted by the defendant stating that the plaint plan was defective and apart from the description of the property; that it is not correct to state that the plaintiff was entitled to the plots situated on the south and west by way of a sale deed executed in his favour; that the

defendant has been in enjoyment of the property, which was originally enjoyed by the predecessor-in-title; that actually the plots on the south of the plaintiff's property were in the actual possession of the defendant; that an Advocate Commissioner appointed by the Court, has also noted the same; that the alleged sale deed executed by Muthammal was only created, and it could not convey any right, title or interest to the plaintiff over the suit property; that the said Muthammal did not enjoy any right to execute Ex.A2 sale deed; that the plaintiff or his brother cannot claim any right over the property through Ex.A2; that the plaintiff's father Kandasamy Udayar had his first wife, through whom his daughters Nagammal and Chellammal were born; that the mother of the plaintiff Muthammal was not the legally wedded wife of Kandasamy, and thus, the plaintiff was not entitled to the reliefs asked for.

4. Necessary issues were framed by the trial Court, and on trial, the suit was dismissed. Aggrieved, the plaintiff took it on appeal, which was also dismissed by the lower appellate Court. Hence, the plaintiff has brought forth this second appeal.

5. At the time of admission, this Court formulated the following substantial question of law:

"Whether the judgments of the Courts below are vitiated by their failure to consider the entire evidence on record and apply the correct principles of law?

6. This Court heard the learned Counsel for the appelant and also the learned Counsel for the respondent on those contentions.

7. This Court is of the considered opinion that the appeal is bereft of substance.

8. Admittedly, the suit property originally belonged to Kandasamy Udayar. The case of the plaintiff was that himself and his brother Krishnasamy were the children of Kandasamy Udayar and his wife Muthammal; that on the death of Kandasamy, all of them were enjoying the property jointly; and that she executed a sale deed in favour of the plaintiff and his brother Krishnasamy on 16.4.1966 under Ex.A2. Both the Courts below have found that the said Muthammal was not competent to execute such a sale deed in favour of the plaintiff and his brother Krishnasamy. The vendors under Ex.B5 sale deed one Nagammal and Chellammal, and one Palani Andy, who is referred to therein, were the children of Kandasamy Udayar. If so, the suit property, which admittedly belonged to the said Kandasamy, could not have been conveyed by Muthammal in favour of the plaintiff and his brother Krishnasamy under Ex.A2. The further case of the plaintiff that the property was divided between the plaintiff and Krishnasamy cannot also be accepted.

9. The defendant has also raised a plea that Muthammal was not the legally wedded wife of Kandasamy; but, he had his first wife, and she had also children. It is not the case of either of the parties that the property of Kandasamy was ever put to division among the members of the family. From the available evidence, i t would be clear that Kandasamy had two wives and had children through both the wives. In the absence of any plea or proof as to any division of the property of Kandasamy, the sale deed executed by Muthammal under Ex.A2 in favour of the plaintiff and his brother Krishnasamy and the subsequent oral partition that took place between the plaintiff and Krishnasamy have got to be declared as invalid. The plaintiff has sought for the relief only on the basis of Ex.A2 sale deed. Under such circumstances, without going into the merits or otherwise of the rival contentions put forth,

it would be suffice to state that the plaintiff cannot seek for a declaration of his title in respect of the suit property on the basis of Ex.A2 or the subsequent oral partition, which, in view of the reasons stated, are invalid. Hence, the judgments of both the Courts below dismissing the suit, have got to be affirmed.

10. The learned Counsel for the appellant would submit that though Ex.A2 is invalid, the plaintiff is having his rights in the property, which has got to be adjudicated upon. In such circumstances, this Court is of the view that liberty has got to be given to the plaintiff in that regard.

11. In the result, this second appeal is dismissed, but giving liberty to the appellant/plaintiff to work out his remedies, if available, by taking necessary proceedings for appropriate reliefs, if so advised. If such proceedings are taken by the plaintiff, then the respondent/defendant should also be given an opportunity of raising her plea, put forth all along in the proceedings hitherto, both on facts and in law. The parties shall bear their costs.

Index: yes
Internet: yes

To:
1. The I Additional District Judge
Tiruchirapalli
2. The District Munsif
Thurayur
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/